

DRAFT
VIRGINIA BOARD OF OPTOMETRY
SPECIAL CONFERENCE COMMITTEE

TIME & PLACE: May 18, 2007 at 8:40 a.m., at the Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 1, Richmond, Virginia.

MEMBERS PRESENT: David H. Hettler, O.D.
W. Ernest Schlabach, Jr., O.D.

STAFF PRESENT: Elizabeth A. Carter, Ph.D., Executive Director
Mykl Egan, Senior Adjudication Analyst, APD
Carol Stamey, Administrative Assistant

MATTER SCHEDULED: **Susan K. Herndon, O.D., 0618-000388**
Case No.: 109853
Dr. Herndon was present and not represented by Counsel.

PRELIMINARY MATTER: The conference was conducted to discuss allegations that he may have violated portions of the laws and regulations governing the practice of optometry in the Commonwealth of Virginia. The allegations are contained in a notice of informal conference and are incorporated into the minutes as Attachment 1.

After discussing the allegations in the Notice with Dr. Herndon, the Committee convened in closed session for deliberations pursuant to Section 2.2-3711.A (15) of the Code of Virginia. Having certified that the matters discussed in the preceding closed session met the requirements of Section 2.1-3712 of the Code, the Committee re-convened and announced its decision.

DECISION: After consideration of the evidence and statements concerning the allegations, the Committee voted to adopt findings of fact and conclusions of law and issuing an Order requiring additional continuing education, an unannounced inspection and CE audit for the next three (3) years.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Dr. Herndon unless a written request to the Board for a formal hearing on the allegations

made against him is received from Dr. Herndon within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

ADJOURNMENT:

The conference adjourned at 9:30 a.m.

David H. Hettler, O.D.
Chair

Elizabeth A. Carter, Ph.D.
Executive Director

May 31, 2007

Susan K. Herndon, O.D.
3359 Turnberry Circle
Charlottesville, Virginia 22911

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: NOTICE OF INFORMAL CONFERENCE
License No.: 0618-000388
Case No's.: 109853

Dear Dr. Herndon:

This is an official notification that an Informal Conference will be held before a Special Conference Committee of the Board of Optometry ("Committee") on **March 15, 2007 at 8:45 a.m.**, at the Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, Virginia, Conference Room 4 (directions enclosed). If you have any additional documents to be presented on your behalf, please bring five (5) copies with you. Additionally, please bring documentation of all continuing education credits you have completed in the past three renewal years 2006, 2005 and 2004.

The conference will be conducted pursuant to §§ 2.2-4019, 2.2-4021 and 54.1-2400(10) of the Code of Virginia (1950) as amended ("the Code"), and is being held to review allegations that you may have violated certain laws and regulations governing the practice of optometry in the Commonwealth of Virginia. Specifically, during the course of your evaluation of Patient A during her visit on June 12, 2006:

1. You may have violated § 54.1-3215(3), (16) and (17) of the Code, and 18 VC 105-20-45(A)(1)(d) of the Board of Optometry Regulations ("Regulations"), in that you failed to perform an external health evaluation on Patient A.

2. You may have violated § 54.1-3215(3), (16) and (17) of the Code, and 18 VC 105-20-45(A)(3)(a), (b) and (c) of the Regulations, in that after providing the patient with contact lenses, you failed to perform a proper fitting, you failed to test the patient's acuity through the lenses and failed to provide any directions for care.

The purpose of an informal conference is to allow the Special Conference Committee, which consists of not less than two members of the Virginia Board of Optometry to inquire into, and discuss with you personally, these allegations. After reviewing the alleged violations with you, the Committee will make a recommendation of appropriate action. The Committee is authorized to take the following actions:

1. The Committee may exonerate you;
2. The Committee may place you on probation with such terms as it may deem appropriate;

3. The Committee may reprimand you;
4. The Committee may impose a monetary penalty pursuant to § 54.1-2401 of the Code; or
5. The Committee may modify a previous order; or
6. The Committee may refer the case to the Board of Optometry or a panel thereof for a formal hearing. If the Committee is of the opinion that a suspension or revocation of your license may be justified, the Committee may offer you a consent order in lieu of a formal hearing.

You have the right to information, which will be relied upon by the Board in making a decision. Therefore, I enclosed a copy of the documents, which will be distributed to the members of the Committee and will be considered by the Committee when discussing the allegations with you and when deliberating upon your case. These documents are enclosed only with the original notice sent by certified mail, and must be claimed at the post office. Also, enclosed are copies of the relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as the laws and regulations relating to the practice of optometry in Virginia that are cited in this notice.

A request to continue this proceeding must be made in writing and directed to me at the address listed on this letter. Such request must be received by 5:00 p.m. on **March 2, 2007**. Only one such motion will be considered. Absent exigent circumstances, such as personal or family illness, a request for a continuance after **March 2, 2007**, will not be considered.

You may be represented by an attorney at the informal conference. If you obtain counsel, you should do so as soon as possible, as a motion for a continuance due to the unavailability of counsel will not be considered unless received by **March 2, 2007**. Further, it is your responsibility to provide the enclosed materials to your attorney.

Should you fail to appear at the informal conference the Board may proceed to a formal administrative hearing in order to impose sanctions. Should you have any questions regarding this notice, please contact me, at (804) 662-9910.

Sincerely,

Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Optometry

Enclosures

cc: Sandra Whitley Ryals, Director, Department of Health Professions
James L. Banning, Director, Administrative Proceedings Division
Members, Special Conference Committee
Mykl D. Egan, Adjudication Specialist
Lila Theberge, R.N., Senior Investigator (109853)